

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AM GENERAL LLC,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,  
ACTIVISION PUBLISHING, INC., and  
MAJOR LEAGUE GAMING CORP.,

Defendants.

CASE NO. 1:17-cv-08644-GBD

**DECLARATION OF MARC E. MAYER  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

I, Marc E. Mayer, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California. I have been admitted to this Court *pro hac vice* in connection with this action. I am, through my professional corporation, a partner at the law firm Mitchell Silberberg & Knupp LLP, counsel of record for Defendants. I know all of the following of my own personal knowledge and, if called as a witness, could and would competently testify thereto.

2. On December 14, 2018, Defendants took the deposition of Michael Gard, the 30(b)(6) corporate designee of Global Icons, AM General's ("AMG's") licensing agent. Attached hereto as **Exhibit 1** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Gard's deposition.

3. On February 28, 2019, Defendants took the deposition of Robert Gold, AMG's 30(b)(6) corporate designee. Attached hereto as **Exhibit 2** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Gold's deposition.

4. On February 1, 2019, Defendants took the deposition of Lee Woodward, a former employee of AMG. Attached hereto as **Exhibit 3** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Woodward's deposition.

5. On February 21, 2019, Defendants took the deposition of Daniel Dell'Orto, an employee at AMG. Attached hereto as **Exhibit 4** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Dell'Orto's deposition.

6. On February 26, 2019, Defendants took the deposition of Timothy Gorbatoff, the 30(b)(6) corporate designee of General Motors LLC ("GM"). Attached hereto as **Exhibit 5** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Gorbatoff's deposition.

7. On March 5, 2019, Defendants took the deposition of John Ross, an employee of AMG. Attached hereto as **Exhibit 6** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Ross's deposition.

8. On March 12, 2019, Defendants took the deposition of Deborah Reyes, an employee of AMG. Attached hereto as **Exhibit 7** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Ms. Reyes's deposition.

9. On February 15, 2019, AMG took the deposition of Robert Kostich, the 30(b)(6) corporate designee of Activision Blizzard, Inc. and Activision Publishing, Inc. Attached hereto as **Exhibit 8** is a true and correct copy of relevant excerpts of the transcript of Mr. Kostich's deposition.

10. Attached hereto as **Exhibits 9 through 52** are true and correct copies of various exhibits entered in the depositions referenced above in Paragraphs 2 through 9. These exhibits

and their corresponding deposition exhibit numbers are set forth for convenience in the following table:

Mayer Decl.	Deposition Exhibit
Exhibit 9	Depo. Ex. 4
Exhibit 10	Depo. Ex. 5
Exhibit 11	Depo. Ex. 10
Exhibit 12	Depo. Ex. 21
Exhibit 13	Depo. Ex. 24
Exhibit 14	Depo. Ex. 41
Exhibit 15	Depo. Ex. 44
Exhibit 16	Depo. Ex. 51
Exhibit 17	Depo. Ex. 52
Exhibit 18	Depo. Ex. 54
Exhibit 19	Depo. Ex. 55
Exhibit 20	Depo. Ex. 56
Exhibit 21	Depo. Ex. 62
Exhibit 22	Depo. Ex. 70
Exhibit 23	Depo. Ex. 77
Exhibit 24	Depo. Ex. 92
Exhibit 25	Depo. Ex. 154
Exhibit 26	Depo. Ex. 156
Exhibit 27	Depo. Ex. 157
Exhibit 28	Depo. Ex. 168
Exhibit 29	Depo. Ex. 193
Exhibit 30	Depo. Ex. 195

Mayer Decl.	Deposition Exhibit
Exhibit 31	Depo. Ex. 208
Exhibit 32	Depo. Ex. 209
Exhibit 33	Depo. Ex. 213
Exhibit 34	Depo. Ex. 232
Exhibit 35	Depo. Ex. 233
Exhibit 36	Depo. Ex. 234
Exhibit 37	Depo. Ex. 235
Exhibit 38	Depo. Ex. 236
Exhibit 39	Depo. Ex. 240
Exhibit 40	Depo. Ex. 244
Exhibit 41	Depo. Ex. 248
Exhibit 42	Depo. Ex. 250
Exhibit 43	Depo. Ex. 251
Exhibit 44	Depo. Ex. 252
Exhibit 45	Depo. Ex. 254
Exhibit 46	Depo. Ex. 282
Exhibit 47	Depo. Ex. 291
Exhibit 48	Depo. Ex. 292
Exhibit 49	Depo. Ex. 296
Exhibit 50	Depo. Ex. 299
Exhibit 51	Depo. Ex. 301
Exhibit 52	Depo. Ex. 302

11. Attached hereto as **Exhibit 53** is a true and correct copy of relevant excerpts of AMG's Supplemental Response to the First Set of Requests for Admission Propounded by Defendant Activision Publishing, Inc., served upon Defendants on October 22, 2018.

12. Attached hereto as **Exhibit 54** is a true and correct copy of relevant excerpts of AMG's Third Supplemental Responses and Objections to Activision Publishing Inc.'s Second Set of Interrogatories, served upon Defendants on May 24, 2019.

13. Attached as **Exhibit 55** is a true and correct copy of relevant excerpts of AMG's Second Supplemental Responses and Objections to Activision Publishing Inc.'s Third Set of Interrogatories, served upon Defendants on May 24, 2019.

14. Attached hereto as **Exhibit 56** is a true and correct copy of relevant excerpts of AMG's Second Supplemental Responses and Objections to Activision Publishing Inc.'s Fourth Set of Interrogatories, served upon Defendants on May 24, 2019.

15. Attached hereto as **Exhibit 57** is a true and correct copy of a document produced by AMG in this action bearing the Bates number AMG0020238.

16. Attached hereto as **Exhibit 58** are true and correct copies of documents produced by AMG in this action bearing Bates numbers AMG0020239-99 and AMG0027708-27711, provided in Bates-number order.

17. Attached hereto as **Exhibit 59** are true and correct copies of various additional documents produced by AMG in this action or relevant excerpts therefrom, provided in Bates-number order. These documents bear Bates numbers AMG0010022-25, AMG0010179-88, AMG0010288-89, AMG0010790-92, AMG0010861-74; AMG0010883-86; AMG0011054-59; AMG0011132-35, AMG0014177-14197, AMG0018367-69, AMG0074880-882, AMG0075359-69, AMG0075659-70.

18. [intentionally omitted]

19. Attached hereto as **Video Exhibit G**, submitted under separate cover on a USB Flash drive, are true and correct copies of video footage from two *Call of Duty: Modern Warfare 2* trailers depicting HMMWV military vehicles, produced as API350349. These trailers were used as stimuli in Defendant expert E. Deborah Jay Ph.D.'s consumer survey (test respondents

were shown the two trailers while control respondents were shown the same trailers, except that frames depicting the HMMWV vehicles were removed).

20. I am familiar with the documents that AMG produced in this action.

Additionally, I have personally reviewed all licenses produced by AMG in this action, as well as all cease-and-desist letters produced by AMG that were sent by AMG or on AMG's behalf with respect to the unauthorized use of its trademark or trade dress. I also have reviewed all of the documents produced by AMG's licensing agents the Beanstalk Group and Global Icons LLC (the "Licensing Agents") in response to third party subpoenas issued by my office. Based on my review of AMG's document productions, I can attest to the following:

■ [REDACTED]

[REDACTED]

■

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. During the entire discovery period in this action, AMG has never identified any specific individual that erroneously believed that AMG produced, sponsored, endorsed, or approved any video game containing a Humvee. AMG also has not produced any documents reflecting any that any person erroneously believed that AMG produced, sponsored, endorsed, or approved any video game containing a Humvee, including any communication from any consumer reflecting any such confusion. Additionally, AMG did not produce any documents or other evidence reflecting that any person erroneously believed that AMG produced, sponsored, endorsed, or approved (1) the Mega Bloks construction sets titled "Light Armor Firebase" and "Armored Vehicle Charge" or (2) any BradyGames strategy guide for a *Call of Duty* game.

22. Based on my review of AMG's document productions in this case, I have been unable to locate any survey evidence, customer testimony, or market research produced by AMG establishing that a significant portion of the consuming public associates Humvees with AMG.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California this 31st day of May, 2019.

  
Marc E. Mayer